IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.3207 OF 2003

Mrs. Kalabai Shankar Salunke & Ors. ..Petitioners

Versus

Hamid Chand Patel ..Respondent

Ms Revati Rajput h/f K.P.Kapoor for petitioners

Mr.D.B.Sawant for respondent

CORAM : P.V.KAKADE, J.

DATE : 4th APRIL, 2006

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. The petitioner-tenant has preferred this petition against the order passed on 4.3.2002 by the lower appellate court dismissing the appeal and confirming the judgment and order passed by the trial court decreeing the suit for eviction of the petitioner from the suit

premises under Section 12(2) as well as 13(1)(g) of the Bombay Rent Act, 1947.

3. The plaintiff came with the case that he had business of manufacturing of nuts and bolts in the suit premises and business was given for conducting to one Shankar Salunke, the predecessor of the present petitioners. After his death present petitioners came in possession of the premises being heirs and legal representatives. In the year 1981 the plaintiff terminated the agreement by notice dated 9.1.1981 and after receipt of the notice, the defendants did not pay monthly compensation from February 1980 and contended that they are protected licensee under the provisions of the Bombay Rent Act. The plaintiff conceded that they were protected licensee and therefore by notice dated 30.1.1986 called upon them to pay the arrears of rent at the rate of Rs.50/= per month from February 1980. However, inspite of the notice, the defendants did not pay the rent, the respondent-plaintiff also based his claim on the ground that he is without employment or business and his sons were also without job and therefore, he required the suit premises reasonably and bonafide for conducting his own business.

4. The petitioners contested the suit on various counts denying the allegations that they were in arrears of payment of rent for more than six months and also on the ground that no case is made out as contemplated under Section 13(1)(g) of the Bombay Rent Act and as such the suit was sought to be dismissed.

5. The Trial Court after hearing both the parties and on the basis of available evidence came to the conclusion that the plaintiff had proved his case contemplated under Section 12(2) as well as 13(1)(g) of the Bombay Rent Act. He also came to the conclusion that the greater hardship would be caused to the plaintiff if the decree is refused than to the defendant if the decree is passed and as such eviction decree came to be passed.

. The appeal was carried to the District Court, who after hearing both the parties and on the basis of available evidence concurred with the findings of the trial court and dismissed the appeal. Hence the present petition.

6. At the outset, it must be noted that the

plaintiff has come with the specific case that he required the suit premises reasonably and bonafide for conducting his own business and he is without any employment or business. According to him, he was doing business in the suit premises in the year 1970. However, he gave the business to conduct to one Shankar Salunke, the predecessor of the present petitioners, and therefore, he submitted that he required the suit premises to do some business of selling vegetables, as he has no other source of income. He was working in Bradbury Mills as labourer and since the closure of the said Mill he has no employment and no other source of income. According to him, his children are serving elsewhere and are not providing him any money and are not staying with him and as such his requirement is for personal use and occupation. This aspect was sought to be challenged on behalf of the petitioners with evidence, however, as record shows that this evidence has fallen to short to rebut the plaintiff’s evidence successfully, and therefore, both the courts below came to the conclusion that the plaintiff had proved his case as contemplated under Section 13(1)(g) of the Bombay Rent Act.

7. On the ground of greater hardship, it is found by

both the courts below that the plaintiff would suffer greater hardship if the decree is refused to be passed. Perusal of the judgments of both the courts below, I do not see any perversity in recording the relevant finding in this regard to the effect that the plaintiff's case is proved in toto.

8. So far as the case sought to be made under Section 12(2) of the Bombay Rent Act by the plaintiff is concerned, the evidence on record is quite sufficient to show that the act of the defendants is covered by four corners of Section 12(2) of the Act and both the courts below have rightly found that petitioners are also liable to be evicted on that count.

9. Under the circumstances, I have no doubt whatsoever that the reasoning adopted and findings recorded by both the courts below appear to be just, legal and proper and therefore, it would brook no interference. In the result the petition stands dismissed with no order as to costs.

10. At this stage the learned counsel for the petitioner sought Stay of this Order for four weeks. In

view of the facts and circumstances, the decree shall not be executed for the period of four weeks from the date of this order.

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